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DOLLAR TREE STORES, INC.

13 UNITED STATES DISTRICT COURT

14 NORTHERN DISTRICT OF CALIFORNIA

15 MIGUEL A. CRUZ, and JOHN D. HANSEN,
16 individually and on behalf of all others
similarly situated,

17 Plaintiffs,

18 v.

19 DOLLAR TREE STORES, INC.,

20 Defendant.

CASE NO. C 07 2050 SC

**DEFENDANT'S ADMINISTRATIVE
MOTION TO ESTABLISH
BRIEFING SCHEDULE
REGARDING DEFENDANT'S
MOTIONS FOR SUMMARY
JUDGMENT; DECLARATION OF
ALEX HERNAEZ IN SUPPORT**

JUDGE: Hon. Samuel Conti

COMPLAINTS FILED: April 11, 2007

July 6, 2007

TRIAL DATES: No dates set.

22 ROBERT RUNNINGS individually, and on
23 behalf of all others similarly situated,

24 Plaintiff,

25 v.

26 DOLLAR TREE STORES, INC.,

27 Defendant.

CASE NO. C 07 04012 SC

1 Defendant, Dollar Tree Stores, Inc. ("Dollar Tree") respectfully requests
2 that the Court establish a briefing schedule with respect to the pending motions for
3 summary judgment it has filed. In support of this request, Dollar Tree states as follows:

4 1. The parties appeared at a case management conference on
5 November 16, 2007. See Hernaez Decl. at ¶ 2 & Ex. A (Transcript of Proceedings).
6 During the conference, the Court established January 20, 2008 as the last date to file
7 individual motions for summary judgment. *Id.* at Ex. A, 4:13-14. However, the Court did
8 not set a hearing date for the summary judgment motions. Rather, it stated that "once I
9 get all the papers on the motion for summary judgment, then I'll set a date for the
10 hearing." *Id.* at Ex. A, 5:2-10. The parties expressly agreed. *Id.*

11 2. On January 19, 2008, Dollar Tree filed two individual motions for
12 summary judgment—one against Plaintiff Hansen (Case No. C 07 2050 SC) and one
13 against Plaintiff Runnings (Case No. C 07 04012 SC).

14 3. Between February 5, 2008 and February 6, 2008, the parties
15 exchanged email correspondence regarding a briefing schedule for the pending motions.
16 *Id.* at ¶ 3 & Ex. B. On February 6, 2008, opposing counsel, Mr. Fietz, stated that "I do
17 not disagree that it is reasonable to discuss what the briefing schedule should be" *Id.*
18 at Ex. B, p.1. Counsel for Dollar Tree, Ms. McClain, responded by stating that "we
19 should strive to handle this by stipulation if possible." *Id.*

20 4. On February 11, 2008, the parties held a conference call. At the
21 beginning of the call Mr. Fietz stated to Dollar Tree's counsel, Ms. Berman and Mr.
22 Hernaez, **without equivocation** that Plaintiffs would have a proposed due date for
23 Plaintiffs' briefs within a few days. Also on the call was Ms. Lin, counsel for Plaintiff.

24 5. On February 13, 2008, Mr. Hernaez made an inquiry as to the
25 briefing schedule. *Id.* at ¶ 5 & Ex. C. Directly contrary to the prior representation made
26 by Mr. Fietz, Ms. Lin responded that no briefing schedule would be agreed to until
27 Plaintiffs first reviewed certain amended discovery responses to be served by Dollar
28

1 Tree. This position was reiterated by Mr. Cole in a subsequent conference call. *Id.* at ¶
2 5.

3 6. Dollar Tree asserts that the briefing of its pending motions, which
4 involve individual issues related to Messrs. Hansen and Runnings, are unrelated to the
5 amended discovery responses, which involve class certification issues. Therefore it is
6 appropriate for the Court to establish a briefing schedule. Indeed, if Plaintiffs somehow
7 believe that additional discovery is needed to oppose a summary judgment motion (and
8 plainly it is not), then their remedy is pursuant to Fed. R. Civ. P. 56(f). Bu their remedy is
9 not to hijack the summary judgment process by unreasonably withholding agreement on
10 routine scheduling issues.

11 DATED: February 13, 2008

KAUFF MCCLAIN & MCGUIRE LLP

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13
14 By: /S/
ALEX HERNAEZ

15 Attorneys for Defendant
16 DOLLAR TREE STORES, INC.
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**DECLARATION OF ALEX HERNAEZ IN SUPPORT OF
ADMINISTRATIVE MOTION TO ESTABLISH BRIEFING SCHEDULE REGARDING
DEFENDANT'S MOTIONS FOR SUMMARY JUDGMENT**

I, Alex Hernaez, declare:

1. I am a partner with the firm of Kauff, McClain & McGuire, LLP, attorneys of record for Defendant Dollar Tree Stores, Inc. in the above-captioned matter and in *Robert Runnings v. Dollar Tree Stores, Inc.*, Case No. C 07-04012. I have personal knowledge of the facts stated in this declaration and, if called as a witness, would be competent to testify thereto.

2. Attached hereto as Exhibit A is a true and correct copy of the Transcript of Proceedings dated November 16, 2007.

3. Attached hereto as Exhibit B is a true and correct copy of the correspondence exchanged by the parties between February 5, 2008 and February 6, 2008.

4. On February 11, 2008, the parties held a conference call. At the beginning of the call Mr. Fietz stated to me and to my co-counsel, Ms. Berman, without equivocation that Plaintiffs would have a proposed due date for Plaintiffs' briefs within a few days. Also on the call was Ms. Lin, counsel for Plaintiff.

5. Attached hereto as Exhibit C is a true and correct copy of my email to Ms. Fietz and Ms. Lin dated February 13, 2008. Ms. Lin responded that no briefing schedule would be agreed to until Plaintiffs first reviewed certain amended discovery responses to be served by Dollar Tree. This position was reiterated by Mr. Cole in a subsequent conference call.

I have read this declaration, and do hereby declare, under penalty of perjury under the laws of the United States, that it is true and correct. Executed in San Francisco, California on February 13, 2008.

/S/
ALEX HERNAEZ

4842-4840-8322.1

EXHIBIT A

Pages 1 - 6

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
BEFORE THE HONORABLE SAMUEL CONTI, JUDGE

MIGUEL CRUZ, ET AL.,)

Plaintiffs,)

v.)

NO. C 07-2050 SC

DOLLAR TREE STORES, INC.,)

Defendant.)

ROBERT RUNNINGS,)

Plaintiff,)

v.)

NO. C 07-4012 SC

DOLLAR TREE STORES, INC.,)

Defendant.)

 COPY

San Francisco, California
Friday, November 16, 2007

TRANSCRIPT OF PROCEEDINGS

APPEARANCES:

For Plaintiff Cruz: Edgar Law Firm
408 College Avenue
Santa Rosa, California 96401
BY: JEREMY R. FIETZ, ESQ.

For Plaintiff Runnings:
Scott Cole & Associates
1920 Broadway
Ninth Floor
Oakland, California 94612
BY: SCOTT EDWARD COLE, ESQ.

For Defendant: Kauff, McClain & McGuire
One Post Street
Suite 2600
San Francisco, California 94104
BY: MAUREEN E. MCCLAIN, ATTORNEY

Reported By: BELLE BALL, CSR, RMR, CRR
Official Reporter

1 FRIDAY, NOVEMBER 16, 2007

2 10:08 A.M.

3 P R O C E E D I N G S

4 THE CLERK: Civil 07-2050 and related case Civil
5 07-4012, Miguel Cruz, et al. versus Dollar Tree Stores.

6 Please state your appearances.

7 MR. FIETZ: Good morning, Your Honor. Jeremy Fietz on
8 behalf of the Plaintiffs in the Cruz-Hansen matter.

9 MR. COLE: Good morning, Your Honor. Scott Cole
10 appearing for the Plaintiff in the Runnings matter.

11 MS. MCCLAIN: Maureen McClain for Dollar Tree on both
12 matters, Your Honor.

13 THE COURT: Well, straighten me out on this. You got
14 the 2050, which is Miguel Cruz versus Dollar Stores, and Robert
15 Runnings versus Dollar Stores. All right.

16 MR. FIETZ: Yes, sir.

17 THE COURT: Then also, I understand, there's going to
18 be a class action. Is there -- is there or isn't there?

19 MR. FIETZ: Both cases were pled as class actions,
20 Your Honor. And in fact, we wish to -- the parties wish to
21 inform Your Honor this morning that we have entered into a
22 stipulation to consolidate the actions because they seek the
23 same class relief, on behalf of the same class.

24 THE COURT: So in other words, who's in the -- in
25 other words, both the Cruz case and the Runnings case will be,

1 what, Plaintiffs in the class action? Is that what you are
2 talking about?

3 MR. FIETZ: Yes.

4 THE COURT: Okay, fine. And this is a situation where
5 whether or not -- the issue is whether or not they're employees
6 or -- they are employees, but whether or not they are managers
7 or non-managers.

8 MR. FIETZ: The issue is exactly that, Your Honor.
9 Whether they are exempt from overtime, or not exempt.

10 THE COURT: So what do you want to do now? There's a
11 motion for summary judgment coming on, isn't there?

12 MS. MCCLAIN: We intend to file individual motions for
13 summary judgment, yes, Your Honor.

14 THE COURT: When do you intend to file it?

15 MS. MCCLAIN: I was -- probably about, hmm, three
16 months. I was calendaring it in my mind with the class
17 certification motions, whether we would file it before or after
18 the motions to certify the class.

19 THE COURT: Three months. That's a long time.

20 MS. MCCLAIN: We can file it earlier.

21 THE COURT: Hmm?

22 MS. MCCLAIN: We can file it earlier.

23 THE COURT: Well, what do you think? I don't want you
24 to rush, but I don't want -- how about, how about by the middle
25 of January? Is that all right?

1 MS. MCCLAIN: Yes.

2 THE COURT: Okay. I'll say you file it by January --
3 give me a date --

4 MS. MCCLAIN: And that would be on the individual
5 Plaintiffs only, Your Honor, before the certification stage?

6 THE COURT: Yes. I thought we would handle the
7 summary judgment motion first. And then once that's either
8 dispositive or non-dispositive, then we can take the other --

9 MR. COLE: That makes sense to us, Your Honor.

10 THE COURT: So, file it by January the 12th, is that
11 agreeable with you? Or the 20th? You tell me which.

12 MS. MCCLAIN: The 20th, Your Honor. Thank you.

13 THE COURT: All right, January 20th. And then after
14 that, then you do what you have to do after that. Okay?

15 MR. COLE: Okay. Would we come back in at that point
16 for another case management conference, to set dates for class
17 certification?

18 THE COURT: Oh, yes. What I'll do, once I get your
19 papers, then I'll set the date for the hearing on the motion for
20 summary judgment. You will get most of that.

21 MR. COLE: Then, I would assume after the ruling on
22 summary judgment, we will talk about class certification at that
23 point if the case is still alive?

24 THE COURT: Right. The reason I'm not setting dates,
25 hearing a motion for summary judgment, you might want extra

1 time, she may want some extra time, and going back and forth
2 rather than setting it now. So once I get all the papers on the
3 motion for summary judgment, then I'll set the date for the
4 hearing on that. Okay?

5 MR. COLE: All right.

6 MS. MCCLAIN: Thank you, Your Honor.

7 MR. FIETZ: Thank you, Your Honor.

8 MR. COLE: Thank you.

9 THE COURT: Uh-huh.

10 THE CLERK: This Court stands in recess. All rise.

11 (Conclusion of Proceedings)
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CERTIFICATE OF REPORTER

I, BELLE BALL, Official Reporter for the United States Court, Northern District of California, hereby certify that the foregoing proceedings in Case No. C 07-2050 SC, Cruz, et al., v. Dollar Tree Stores and Case No. C 07-4012, Runnings v. Dollar Tree Stores, Inc., were reported by me, a certified shorthand reporter, and were thereafter transcribed under my direction into typewriting; that the foregoing is a true record of said proceedings as bound by me at the time of filing.

The validity of the reporter's certification of said transcript may be void upon disassembly and/or removal from the court file.



Belle Ball, CSR 8785, RMR, CRR

Tuesday, February 5, 2008

EXHIBIT B

From: McClain, Maureen
Sent: Wednesday, February 06, 2008 2:29 PM
To: 'Jeremy Fietz'; Scott E. Cole; Carrie S. Lin
Cc: Berman, Beth Hirsch
Subject: RE: Summary Judgment Motions in Hansen/Cruz and Runnings

[Jeremy, please let me know as soon as possible what your proposed briefing schedule is. If we cannot agree, or if there is undue delay in your getting back to us, we will need to file the motion. However, we should strive to handle this by stipulation if possible. Will you also let me know your availability for the discovery meet and confer telephone conference. Maureen

From: Jeremy Fietz [mailto:jeremy@classattorneys.com]
Sent: Wednesday, February 06, 2008 2:18 PM
To: McClain, Maureen; Scott E. Cole; Carrie S. Lin
Cc: Berman, Beth Hirsch
Subject: RE: Summary Judgment Motions in Hansen/Cruz and Runnings

Maureen,

While we do not claim "unlimited time" to respond to the motions, we think the Court transcript makes it clear that the Court explicitly chose not to set the hearing date to afford the parties non-standard briefing time without the need for Court intervention.

[I do not disagree that it is reasonable to discuss what that briefing schedule should be, however, and will discuss it with Scott and Carrie.

Jeremy

-----Original Message-----

From: McClain, Maureen [mailto:mcclain@kmm.com]
Sent: Wednesday, February 06, 2008 9:25 AM
To: Jeremy Fietz; Scott E. Cole; Carrie S. Lin
Cc: Berman, Beth Hirsch
Subject: RE: Summary Judgment Motions in Hansen/Cruz and Runnings

Jeremy: I do not think that anything in the record suggests that Plaintiffs received unlimited time to respond to the motions. The minute order certainly does not indicate that interpretation and the clerk has consistently told my office that the Court expected briefing on the normal schedule. I have reviewed the transcript of the 11/16 conference

2/13/2008

which also does not establish that Plaintiffs have an indefinite time to respond. Therefore, our position is that, absent an agreement from Defendant, Plaintiffs' opposition briefs were due on 2/4. That being said, I think we should work out a briefing schedule to submit to the Court by way of a stipulation and proposed order. Defendant's view is that your brief should be due on 2/18 which provides you with four weeks to respond, and our replies should be due on March 3, which provides us with one further week for the reply briefing. We do not see that meeting and conferring on the recent discovery responses, which address class issues, has anything to do with the briefing schedule on the individual motions for summary judgment. Regarding that separate issue, Beth and I are available for a meet and confer session in the immediate future. My office will circulate some proposed times to all of you. If the above schedule is not acceptable to you, I think the most expeditious procedure is for Defendant to file an administrative motion asking that a briefing schedule be set. Let me know your views. Maureen

From: Jeremy Fietz [mailto:jeremy@classattorneys.com]
Sent: Tuesday, February 05, 2008 10:00 AM
To: McClain, Maureen; Scott E. Cole; Carrie S. Lin
Cc: Berman, Beth Hirsch
Subject: RE: Summary Judgment Motions in Hansen/Cruz and Runnings

Maureen,

While we don't think our understanding is contrary to the minute order, we have no objection to seeking clarification from the Court regarding briefing schedule. Appropriate timing for such clarification may be an issue however, as we intend to meet and confer with you about Dollar Tree's discovery responses and will seek supplemental responses in advance of any due date for opposition to the MSJ. As a result, we suggest that we conclude a meet and confer process pertaining to the discovery and then perhaps request clarification from the Court regarding MSJ briefing once we know whether motion practice will be necessary on any unresolved discovery issues.

Jeremy

-----Original Message-----

From: McClain, Maureen [mailto:mcclain@kmm.com]
Sent: Tuesday, February 05, 2008 9:54 AM
To: Jeremy Fietz; Scott E. Cole; Carrie S. Lin
Cc: Berman, Beth Hirsch
Subject: RE: Summary Judgment Motions in Hansen/Cruz and Runnings

Thanks Jeremy. I do think we should get clarification on a due date as the minute order seems contrary to the below understanding. Shall we submit a joint written request for clarification including a request that due dates for the opposition and reply be set. I expect neither one of us want this to be open-ended. Do you want to draft such a request for my review? Maureen

From: Jeremy Fietz [mailto:jeremy@classattorneys.com]
Sent: Tuesday, February 05, 2008 9:46 AM
To: McClain, Maureen; Scott E. Cole; Carrie S. Lin
Cc: Berman, Beth Hirsch
Subject: RE: Summary Judgment Motions in Hansen/Cruz and Runnings

Maureen,

While the minute order itself is not entirely clear, we had a strong understanding from the Court's instructions at the hearing itself that the MSJ hearing date was to be open-ended in order to give us time to properly respond (with the benefit of discovery, etc.). We understood that that was the reason the hearing date was not set. We do not believe there is currently a due date for the opposition papers. If you review the Court transcript and feel differently perhaps we should set a conference call to discuss it with the Court.

Jeremy

-----Original Message-----

From: McClain, Maureen [mailto:mcclain@kmm.com]

Sent: Tuesday, February 05, 2008 8:56 AM

To: Jeremy Fietz; Scott E. Cole; Carrie S. Lin

Cc: Berman, Beth Hirsch

Subject: Summary Judgment Motions in Hansen/Cruz and Runnings

Dear Jeremy, Scott and Carrie: We expected your opposition papers yesterday (14 days after our filing date of 1/19/08). That is how I read the Court's 11/16/07 Order and what the clerk told us when my office inquired about the briefing schedule (The clerk said the normal briefing schedule applied). What is your view? Maureen

2/13/2008

EXHIBIT C

Hernaez, Alex

From: Hernaez, Alex

Sent: Wednesday, February 13, 2008 10:03 AM

To: Jeremy R. Fietz Esq. (jeremy@classattorneys.com); 'Carrie S. Lin'

Subject: Briefing Schedule

Hello all. Can we please have a proposed briefing schedule for the summary judgment motion? This simple issue has been pending for too long. If we do not hear from you by tomorrow we will be forced to file an administrative motion.

Alex Hernaez
Kauff McClain & McGuire LLP
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San Francisco, California 94104
Telephone: (415) 955-1408
Mobile: (415) 902-5628
Fax: (415) 421-0938

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